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3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 MUHAMMAD CHAUDHRY,)
7 Plaintiff,) No. CV-09-3089-JPH
8 v.) ORDER GRANTING DEFENDANT'S
9 MICHAEL J. ASTRUE, Commissioner) MOTION FOR SUMMARY JUDGMENT
10 of Social Security,)
11 Defendant.)
12)

13 BEFORE THE COURT are cross-motions for summary judgment noted
14 for hearing without oral argument on October 22, 2010 (Ct. Rec.
15 15, 18). Attorney Cory Brandt represents Plaintiff; Special
16 Assistant United States Attorney L. Jamala Edwards represents the
17 Commissioner of Social Security (Commissioner). The parties have
18 consented to proceed before a magistrate judge (Ct. Rec. 5).
19 After reviewing the administrative record and the briefs filed by
20 the parties, the court **GRANTS** Defendant's Motion for Summary
21 Judgment (Ct. Rec. 18) and **DENIES** Plaintiff's Motion for Summary
22 Judgment (Ct. Rec. 15).

23 **JURISDICTION**

24 Plaintiff protectively filed concurrent applications for
25 disability insurance benefits (DIB) and supplemental security
26 income (SSI) on August 31, 2007, alleging disability beginning
27 February 26, 2005 (Tr. 63, 93-95). The applications were denied
28

1 initially and on reconsideration (Tr. 65-67,69-70).

2 At a hearing before Administrative Law Judge (ALJ) R. S.
3 Chester on December 2, 2008, plaintiff, represented by counsel,
4 and vocational expert Sharon Welter testified (Tr. 27-62). On
5 December 30, 2008, the ALJ issued an unfavorable decision (Tr. 11-
6 23). The Appeals Council denied Mr. Chaudhry's request for review
7 on July 16, 2009 (Tr. 1-3). The ALJ's decision became the final
8 decision of the Commissioner, which is appealable to the district
9 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action
10 for judicial review pursuant to 42 U.S.C. § 405(g) on September
11 14, 2009 (Ct. Rec. 1).

12 **STATEMENT OF FACTS**

13 The facts have been presented in the administrative hearing
14 transcript, the ALJ's decision, and the briefs of the parties.
15 They are briefly summarized when relevant.

16 Plaintiff was 32 years old at onset and 35 at the hearing
17 (Tr. 22, 31). He completed twelve years of schooling. Mr. Chaudhry
18 told treatment provider Juliana Ellis-Billingsley, M.D., he earned
19 a bachelor's degree in math and physics in three years in Pakistan
20 (Tr. 51, 217). At other times Plaintiff stated he completed two
21 years of college (Tr. 123, 491).

22 After earning his bachelor's degree, Mr. Chaudhry studied
23 computer engineering in Sydney, Australia, for six months. He
24 then worked as an onsite [computer] support technician, also in
25 Sydney (Tr. 217). Plaintiff did not report this work to the SSA.
26 After six months, Mr. Chaudhry quit his technical support job. He
27 told Dr. Ellis-Billingsley he then began his own real estate
28 investment business, and a mortgage brokerage business. Plaintiff

1 said he spent seven years in Australia doing "extremely well
2 financially" (Tr. 218). When questioned by the ALJ, Mr. Chaudhry
3 testified he had not worked in real estate or investing (Tr. 52).

4 Plaintiff told treating Army doctors he hurt his back in
5 January or February 2004 while a member of the National Guard
6 training for deployment to Iraq (Tr. 217, 294, 303, 315, 516). He
7 alleges his back pain began after he fell on his sacrum carrying a
8 heavy rucksack during training (Tr. 217).

9 In June 2004 Mr. Chaudhry told care providers in civilian
10 (nonmilitary) life he works as a Labor and Industries consultant
11 for Washington state (Tr. 217). In the military he worked as a
12 mental health specialist (Tr. 298).

13 SEQUENTIAL EVALUATION PROCESS

14 The Social Security Act (the Act) defines disability
15 as the "inability to engage in any substantial gainful activity by
16 reason of any medically determinable physical or mental impairment
17 which can be expected to result in death or which has lasted or
18 can be expected to last for a continuous period of not less than
19 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act
20 also provides that a plaintiff shall be determined to be under a
21 disability only if any impairments are of such severity that a
22 plaintiff is not only unable to do previous work but cannot,
23 considering plaintiff's age, education and work experiences,
24 engage in any other substantial gainful work which exists in the
25 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
26 Thus, the definition of disability consists of both medical and
27 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
28 (9th Cir. 2001).

1 The Commissioner has established a five-step sequential
2 evaluation process for determining whether a person is disabled.
3 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
4 is engaged in substantial gainful activities. If so, benefits are
5 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,
6 the decision maker proceeds to step two, which determines whether
7 plaintiff has a medically severe impairment or combination of
8 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

9 If plaintiff does not have a severe impairment or combination
10 of impairments, the disability claim is denied. If the impairment
11 is severe, the evaluation proceeds to the third step, which
12 compares plaintiff's impairment with a number of listed
13 impairments acknowledged by the Commissioner to be so severe as to
14 preclude substantial gainful activity. 20 C.F.R. §§
15 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P,
16 App. 1. If the impairment meets or equals one of the listed
17 impairments, plaintiff is conclusively presumed to be disabled.
18 If the impairment is not one conclusively presumed to be
19 disabling, the evaluation proceeds to the fourth step, which
20 determines whether the impairment prevents plaintiff from
21 performing work which was performed in the past. If a plaintiff is
22 able to perform previous work, that Plaintiff is deemed not
23 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At
24 this step, plaintiff's residual functional capacity (RFC)
25 assessment is considered. If plaintiff cannot perform this work,
26 the fifth and final step in the process determines whether
27 plaintiff is able to perform other work in the national economy in
28 view of plaintiff's residual functional capacity, age, education

1 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

3 The initial burden of proof rests upon plaintiff to establish
4 a *prima facie* case of entitlement to disability benefits.

5 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
6 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
7 met once plaintiff establishes that a physical or mental

8 impairment prevents the performance of previous work. *Hoffman v.*

9 *Heckler*, 785 F.3d 1423, 1425 (9th Cir. 1986). The burden then

10 shifts, at step five, to the Commissioner to show that (1)

11 plaintiff can perform other substantial gainful activity and (2) a

12 "significant number of jobs exist in the national economy" which

13 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th

14 Cir. 1984); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (1999).

15 **STANDARD OF REVIEW**

16 Congress has provided a limited scope of judicial review of a
17 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
18 the Commissioner's decision, made through an ALJ, when the

19 determination is not based on legal error and is supported by

20 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9th

21 Cir. 1985); *Tackett*, 180 F.3d at 1097 (9th Cir. 1999). "The

22 [Commissioner's] determination that a plaintiff is not disabled

23 will be upheld if the findings of fact are supported by

24 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th

25 Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence is

26 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,

27 1119 n. 10 (9th Cir. 1975), but less than a preponderance.

28 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);

1 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
2 573, 576 (9th Cir. 1988). Substantial evidence "means such
3 evidence as a reasonable mind might accept as adequate to support
4 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
5 (citations omitted). "[S]uch inferences and conclusions as the
6 [Commissioner] may reasonably draw from the evidence" will also be
7 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On
8 review, the Court considers the record as a whole, not just the
9 evidence supporting the decision of the Commissioner. *Weetman v.*
10 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v.*
11 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

12 It is the role of the trier of fact, not this Court, to
13 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
14 evidence supports more than one rational interpretation, the Court
15 may not substitute its judgment for that of the Commissioner.
16 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
17 (9th Cir. 1984). Nevertheless, a decision supported by substantial
18 evidence will still be set aside if the proper legal standards
19 were not applied in weighing the evidence and making the decision.
20 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,
21 433 (9th Cir. 1987). Thus, if there is substantial evidence to
22 support the administrative findings, or if there is conflicting
23 evidence that will support a finding of either disability or
24 nondisability, the finding of the Commissioner is conclusive.
25 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

26 ALJ'S FINDINGS

27 The ALJ found plaintiff is insured through December 31, 2010,
28 for DIB purposes (Tr. 11). At step one he found Mr. Chaudhry has

1 not engaged in substantial gainful activity since onset (Tr. 13).
2 At steps two and three, ALJ Chester found plaintiff suffers from
3 chronic pain syndrome, degenerative disc disease (DDD), headaches,
4 and narcolepsy, impairments that are severe but which do not alone
5 or in combination meet or medically equal a Listed impairment (Tr.
6 13, 16). The ALJ found plaintiff's depressive disorder nonsevere
7 (Tr. 14). He found plaintiff less than completely credible (Tr.
8 18-20). At step four, he found plaintiff's RFC for a wide range of
9 light work enables him to perform his past jobs as a fast food
10 worker, sales clerk, cashier, waiter, and cleaner/janitor (Tr.
11 21). Alternatively, the ALJ found at step five, with a sit/stand
12 option, plaintiff can perform other jobs (Tr. 22). Accordingly, he
13 found plaintiff is not disabled as defined by the Social Security
14 Act (Tr. 23).

15 **ISSUES**

16 Plaintiff contends the ALJ erred as a matter of law when he
17 (1) failed to properly credit the opinions of examining physician
18 Marie Ho, M.D., examining psychologist Jennifer Schultz, Ph.D.,
19 and the VA's disability determination; (2) found him not credible;
20 (3) determined his RFC, and (4) failed to identify the demands of
21 his past relevant work (Ct. Rec. 16 at 5). Asserting the ALJ's
22 decision is supported by substantial evidence and free of legal
23 error, the Commissioner asks the Court to affirm (Ct. Rec. 19 at
24 1-2).

25 **DISCUSSION**

26 **A. Weighing medical evidence**

27 In social security proceedings, the claimant must prove the
28 existence of a physical or mental impairment by providing medical

1 evidence consisting of signs, symptoms, and laboratory findings;
2 the claimant's own statement of symptoms alone will not suffice.
3 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated
4 on the basis of a medically determinable impairment which can be
5 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once
6 medical evidence of an underlying impairment has been shown,
7 medical findings are not required to support the alleged severity
8 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cr.
9 1991).

10 A treating physician's opinion is given special weight
11 because of familiarity with the claimant and the claimant's
12 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.
13 1989). However, the treating physician's opinion is not
14 "necessarily conclusive as to either a physical condition or the
15 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
16 751 (9th Cir. 1989)(citations omitted). More weight is given to a
17 treating physician than an examining physician. *Lester v. Chater*,
18 81 F.3d 821, 830 (9th Cir. 1995). Correspondingly, more weight is
19 given to the opinions of treating and examining physicians than to
20 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592
21 (9th Cir. 2004). If the treating or examining physician's opinions
22 are not contradicted, they can be rejected only with clear and
23 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
24 ALJ may reject an opinion if he states specific, legitimate
25 reasons that are supported by substantial evidence. See *Flaten v.*
26 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9th Cir.
27 1995).

28 In addition to the testimony of a nonexamining medical

1 advisor, the ALJ must have other evidence to support a decision to
2 reject the opinion of a treating physician, such as laboratory
3 test results, contrary reports from examining physicians, and
4 testimony from the claimant that was inconsistent with the
5 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
6 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
7 Cir. 1995).

8 *Physical limitations*

9 On May 10, 2008, more than three years after onset, Dr. Ho
10 examined plaintiff for complaints of debilitating back pain,
11 migraines, narcolepsy, boils, and depression (Tr. 483). Plaintiff
12 presented in a wheelchair and, alleging he was having a migraine
13 headache, wearing dark glasses. Dr. Ho opined plaintiff appeared
14 at times to exert less than adequate effort, but acknowledged it
15 may have been due to pain and inhibition (Tr. 486 and 488). She
16 assessed an RFC for less than sedentary work (Tr. 488-489)(lifting
17 and carrying limited to less than ten pounds). The ALJ observes

18 Still, Dr. Ho found no evidence of paravertebral
19 muscle spasm or tenderness to feather touch in the
20 cervical or lumbar spine, no evidence of joint
21 deformities, crepitus, or effusion, no evidence of
22 trigger points, and Waddell's signs were negative
23 (Exhibit 7F/8). Dr. Ho assessed the claimant at an
24 RFC of sedentary or less, but it is noted that this
25 assessment is based in part on the claimant's
26 statements that he could not walk or stand; no
27 objective evidence supports those statements. Dr. Ho
28 also believed that the claimant's wheelchair and
single-point cane were prescribed (Ex. 7F/8). From
the above evidence, it appears that the claimant has
not made any attempt to increase his functionality,
instead relying solely on medication for pain. None
of his treating sources have stated that he requires

1 his wheelchair or that his condition is disabling¹. . .
2 The medical and psychological evaluators of the
3 claimant's RFC both state that the claimant does not
4 appear credible, specifically given the lack of atrophy
5 in his legs after three years of using his wheelchair
6 (Ex. 9F/13, 10F/8).

7 (Tr. 19).

8 When he considered Dr. Ho's contradicted opinion, the ALJ
9 weighed the opinions of plaintiff's treatment providers,
10 appropriately giving them greater weight than Dr. Ho is entitled
11 to as an examining doctor. See e.g., *Lester v. Chater*, 81 F.3d at
12 830 (9th Cir. 1995). Plaintiff's treatment providers point out no
13 objective findings support Mr. Chaudhry's subjective radicular
14 symptoms (Tr. 337). At one exam plaintiff complained of current
15 back pain (at a level of 7-8 out of ten in intensity), yet the
16 treatment provider notes plaintiff was able to rise off the exam
17 table "with ease" (Tr. 302). The ALJ observes a chiropractor
18 declined to treat plaintiff given Mr. Chaudhry's reactions during
19 the first visit. His reactions are described as extraordinary high
20 pain complaints "coupled with extraordinarily low ranges of
21 motion, given the lack of objective evidence for such complaints"
22 (Tr. 18, 263, Ex. 1F/50, 1F/56). When plaintiff began using a non-
23 prescribed cane for ambulation in November 2004, the ALJ notes no
24 medical source recommended he use any assistive device. Moreover,

24 ¹The only exception, as the ALJ notes, is treating Army
25 doctor Marcus Ponce De Leon, M.D., who opined in December 2005
26 plaintiff was unable to complete the duties required of a service
27 member (Tr. 19; Ex. 3F/51), apparently due to headaches and
28 narcolepsy, citing "frequent severe headaches" and "unable to
drive or perform duties requiring a high degree of vigilance or
prolonged wakefulness" (Tr. 388). An examiner opined in July
2004 plaintiff should be further evaluated for narcolepsy (Tr.
221) but no further testing appears in the record.

1 treating doctors Sheryl Atoigue, M.D., and Vancil McNulty, M.D.,
2 opined, from an objective stand point, the cane was unnecessary.
3 Mr. Chaudhry's physical therapist *advised against using it*
4 (italics added). Dr. McNulty recommended low-intensity exercise
5 instead. As the ALJ notes, plaintiff failed to heed any of these
6 treatment recommendations (Tr. 18). Similarly, while treatment
7 providers told plaintiff repeatedly that his headaches likely
8 resulted from medication rebound, he refused to comply with
9 treatment recommendations other than taking medication (Tr. 222,
10 238, 458).

11 To further aid in weighing the conflicting opinions, the ALJ
12 evaluated plaintiff and found him less than fully credible (Tr.
13 18-20). Credibility determinations bear on evaluations of medical
14 evidence when an ALJ is presented with conflicting medical
15 opinions or inconsistency between a claimant's subjective
16 complaints and diagnosed condition. See *Webb v. Barnhart*, 433 F.3d
17 683, 688 (9th Cir. 2005).

18 It is the province of the ALJ to make credibility
19 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
20 1995). However, the ALJ's findings must be supported by specific
21 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
22 1990). Once the claimant produces medical evidence of an
23 underlying medical impairment, the ALJ may not discredit testimony
24 as to the severity of an impairment because it is unsupported by
25 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
26 1998). Absent affirmative evidence of malingering, the ALJ's
27 reasons for rejecting the claimant's testimony must be "clear and
28 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

1 "General findings are insufficient: rather the ALJ must identify
2 what testimony not credible and what evidence undermines the
3 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
4 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

5 The Commissioner asserts affirmative evidence of malingering
6 excused the ALJ from providing clear and convincing reasons for
7 his credibility assessment (Ct. Rec. 19 at 6-8). The Court need
8 not decide if the Commissioner is correct because the ALJ's
9 credibility assessment is in fact supported by clear and
10 convincing reasons.

11 The ALJ considered: (1) inconsistent statements; (2) failure
12 to comply with medical treatment, and (3) objective evidence does
13 not support the level of limitation alleged.

14 *Inconsistent statements.* The ALJ observes Mr. Chaudhry
15 testified he last walked without a cane in 2003. He told treating
16 professionals he injured his back in January or February 2004 (Tr.
17 35). Prior to deployment to Iraq in December 2004, Mr. Chaudhry
18 denied any issues with migraines or pain. The next day he was seen
19 only for skin complaints (Tr. 352-353). Mr. Chaudhry testified,
20 however, his wheelchair was prescribed by a doctor at Madigan Army
21 Medical Center² in 2004 (Tr. 36), indicating "pain issues."
22 Plaintiff claims he is wheelchair-bound due to a "broken back"
23 (Tr. 117); he injured his back carrying a heavy rucksack during
24 training at Fort Lewis (Tr. 217), and he "fell onto rough terrain
25 while carrying additional weight and attempting to render

26
27 ²There is no record of a wheelchair prescribed for
28 plaintiff. His first use of a cane was non-prescribed. The
Commissioner accurately notes a second cane was prescribed in
October 2005 without examination (Tr. 381).

1 assistance to [an] injured colleague" (Tr. 457). Plaintiff has and
2 has not worked in real estate and investing.

3 *Noncompliance with treatment.* Plaintiff failed to comply with
4 the home exercise program prescribed for knee and back complaints
5 (Tr. 313, 343) and failed to follow through with neurology's plan
6 of care with respect to his headaches (Tr. 342). Significantly,
7 Mr. Chaudhry continued using a cane even after treating
8 professionals repeatedly advised him to stop (Tr. 338-341, 343).
9 On numerous occasions he declined mental health services despite
10 complaints of disabling depression (Tr. 269, 417, 432, 532).

11 *Objective evidence.* With respect to complaints of disabling
12 back pain and resulting inability to walk without using a cane or
13 wheelchair, tests in December 2005 and May 2008 showed no lumbar
14 abnormality (Tr. 276, 481), although pre-onset (March 2004) it is
15 noted plaintiff "needs conditioning badly" (Tr. 293). Prior to
16 onset, treatment providers note there is no evidence to support
17 reported radicular symptoms (Tr. 337). Plaintiff failed to follow
18 through with additional narcolepsy testing recommended by the
19 first examiner (Tr. 221). Mr. Chaudhry reported a month before
20 onset that his new narcolepsy medication was working (Tr. 361).
21 In 2008, Dr. Ho points out there is no evidence of atrophy (Tr.
22 488) despite allegedly spending years in a wheelchair.

23 In addition, plaintiff's activities during the relevant
24 periods of February 2005 through December 31, 2010 (DIB), and
25 February 2005 through December 30, 2008 (SSI), are inconsistent
26 with the severity of limitation alleged. According to plaintiff's
27 spouse, Mr. Chaudhry flew to Pakistan without her for a family
28 wedding and was gone for about four months, from December 3, 2007

1 until April 2008 (Tr. 143). Plaintiff told Dr. Ho his hobbies
2 include using computers and "green" energy (Tr. 484).

3 The ALJ correctly relied on several factors, including
4 complaints inconsistent with objective medical evidence, failure
5 to comply with treatment, and inconsistent statements, when he
6 found Mr. Chaudhry less than completely credible (Tr. 18-20).

7 The ALJ's reasons for finding plaintiff less than fully
8 credible are clear, convincing, and fully supported by the record.
9 *See Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir.
10 2002)(proper factors include inconsistencies in plaintiff's
11 statements, inconsistencies between statements and conduct, and
12 extent of daily activities). Noncompliance with medical care or
13 unexplained or inadequately explained reasons for failing to seek
14 medical treatment also cast doubt on a claimant's subjective
15 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.
16 2d 597, 603 (9th Cir. 1989). The lack of objective medical
17 evidence may be considered, as long as it is not the sole factor
18 relied on to assess credibility. *Burch v. Barnhart*, 400 F.3d 676
19 (9th Cir. 2005).

20 The ALJ properly discounted Dr. Ho's contradicted RFC to the
21 extent her opinion was based on plaintiff's unreliable self-report
22 that he was unable to walk or stand without assistance. *Bayliss v.*
23 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005)(an ALJ is not
24 required to credit opinions based on plaintiff's unreliable self
25 reporting). The ALJ properly weighed the evidence of Mr.
26 Chaudhry's physical impairments as well as his credibility.

27 *Psychological impairments*

28 Mr. Chaudhry alleges the ALJ should have found his depression

1 and somatoform disorder, diagnosed by Dr. Schultz, severe at step
2 two (Ct. Rec. 16 at 7-8). ALJ Chester found depression is a
3 medically determinable condition but causes no more than mild
4 limitations in plaintiff's ability to do work-related activities
5 (Tr. 14).

6 Dr. Schultz evaluated plaintiff May 19, 2008 (Tr. 490-493),
7 more than three years after onset. Plaintiff could not remember if
8 he ever had mental health treatment (Tr. 490). Dr. Schultz
9 assessed a GAF of 55 indicating moderate symptoms or moderate
10 functional difficulty (Tr. 492).

11 Five months later, in October 2008, treating Dr. Flynn again
12 encouraged plaintiff to see a psychologist (Tr. 532).

13 The ALJ considered the opinion of agency psychologist
14 Patricia Kraft, Ph.D., who notes "many inconsistencies in the
15 record" (Tr. 507): Plaintiff failed to report to SSA his past work
16 for Labor and Industries and his own businesses (Tr. 45-46, 103).
17 He alleges he has been wheelchair-bound for three years yet no leg
18 muscle atrophy is found on examination (Tr. 488). He uses a cane
19 against medical advice (Tr. 338-341), alleges disabling pain but
20 does not attend pain clinic appointments, and fails to comply
21 with treatment [i.e., fails to perform prescribed home exercises],
22 and disability seeking behaviors are continually noted in the
23 medical record. Despite subjective complaints, mental status exams
24 are normal and plaintiff has continually declined therapy, both
25 before and after onset (Tr. 232, 313, 417, 432, 447, 490, 507,
26 532).

27 Although it was before onset, on June 21, 2004, treating
28 doctor Juliana Ellis-Billingsley, M.D., diagnosed plaintiff with

1 depressive disorder NOS. She assessed a current GAF of 70 and
2 estimated his highest GAF in the past year was 75, both indicative
3 of no more than slight or transient symptoms or functional
4 difficulties. Dr. Ellis-Billingsley opined this diagnosis resulted
5 in no impairment and prescribed a sleep aid (Tr. 218-219).

6 As he did when weighing the conflicting opinions of Mr.
7 Chaudhry's physical limitations, the ALJ also considered
8 plaintiff's lack of credibility when he considered psychological
9 functioning (Tr. 18-20).

10 Two months before onset, in December 2004, Mr. Chaudhry
11 denied he had depression (Tr. 346). As noted, he continually [and
12 without any explanation] refused mental health treatment. An
13 "unexplained, or inadequately explained, failure to seek treatment
14 or follow a prescribed course of treatment" can cast doubt on a
15 claimant's sincerity. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
16 1989).

17 The ALJ is responsible for reviewing the evidence and
18 resolving conflicts or ambiguities in testimony. *Magallanes v.*
19 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role of the
20 trier of fact, not this court, to resolve conflicts in evidence.
21 *Richardson*, 402 U.S. at 400. The court has a limited role in
22 determining whether the ALJ's decision is supported by substantial
23 evidence and may not substitute its own judgment for that of the
24 ALJ, even if it might justifiably have reached a different result
25 upon de novo review. 42 U.S.C. § 405(g).

26 The court finds no error in the weight the ALJ gave the
27 evidence of psychological impairment.

28 **B. VA disability opinion and RFC**

1 The ALJ's assessed RFC for a range of light work is fully
2 supported by the record and without error, as noted above.

3 When the ALJ considered the VA disability determination, he
4 points out the VA did not address whether plaintiff could adapt to
5 other vocations [as the ALJ did in his alternative step five
6 finding]. The ALJ also notes the VA did not find plaintiff is 100%
7 disabled in any individual area, nor did they [apparently] find
8 plaintiff's impairments result in 100% disability when considered
9 cumulatively (Tr. 21). An ALJ may give less than great weight to
10 the VA's disability ratings if the ALJ gives specific, persuasive
11 and valid reasons supported by the record. *McCartey v. Massanari*,
12 298 F.3d 1072, 1076 (9th Cir. 2002); *Chambliss v. Massanari*, 269
13 F.3d 520, 522 (5th Cir. 2001)(per curiam). While the ALJ's opinion
14 could be clearer, his reasons meet this standard. ALJ Chester,
15 immediately after discussing the VA's determination, notes he
16 "also placed significant weight" on the opinions of agency
17 professionals Drs. Kraft and Staley (Tr. 21), longitudinal
18 evidence the VA did not have and which undermines the VA's
19 evidence. *See Valentine v. Commissioner of Soc. Sec. Admin.*, 574
20 F.3d 685, 695 9th Cir. 2009)(ALJ justified in rejecting VA's
21 disability rating on basis she had evidence the VA did not, which
22 undermined the evidence the VA did have).

23 **C. Step four**

24 Plaintiff contends the ALJ erred when he failed to identify
25 the demands of Mr. Chaudhry's past relevant work, particularly
26 given his "mental/emotional impairments" (Ct. Rec. 20 at 7-8).

27 At step four, plaintiff bears the burden of showing he is
28 unable to perform any past relevant work, *Meanel v. Apfel*, 172

1 F.3d 1111,1113 (9th Cir. 1999). The ALJ properly found plaintiff's
2 depression causes no more than mild limitations. Accordingly, the
3 ALJ was not required to include mental limitations in the RFC.

4 Plaintiff alleges the ALJ failed to identify the demands of
5 plaintiff's past relevant work (PRW). The argument fails because
6 the ALJ properly relied on the VE's testimony about how
7 plaintiff's PRW is generally performed, as outlined in the DOT
8 (Tr. 52-57). As described in the DOT, plaintiff's RFC for a range
9 of light work is consistent with the requirements of the jobs of
10 cashier, waiter and cleaner/janitor (Tr. 52-56). The ALJ was not
11 required to do more.

12 The ALJ found Mr. Chaudhry can perform several of his past
13 jobs, including cashier, waiter and janitor (Tr. 21). The record
14 fully supports the ALJ's step four determination. Alternatively,
15 the ALJ's step five analysis is also without error.

16 The Court finds the ALJ's assessment of the evidence is
17 supported by the record and free of legal error.

18 CONCLUSION

19 Having reviewed the record and the ALJ's conclusions, this
20 court finds that the ALJ's decision is free of legal error and
21 supported by substantial evidence.

22 IT IS ORDERED:

23 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 18**) is
24 **GRANTED.**

25 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 15**) is
26 **DENIED.**

27 The District Court Executive is directed to file this Order,
28 provide copies to counsel for Plaintiff and Defendant, enter

1 judgment in favor of Defendant, and **CLOSE** this file.

2 DATED this 1st day of December, 2010.

3 s/ James P. Hutton

4 JAMES P. HUTTON

5 UNITED STATES MAGISTRATE JUDGE
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